

## MEMORANDUM

TO: Christian Klein, Chair, Arlington Board of Appeals

FROM: Jonathan Witten, Esq., KP Law, acting as special municipal counsel

RE: Completeness Review of Comprehensive Permit Application submitted by Arlington Land Realty, LLC

DATE: September 26, 2016, **updated July 7, 2020<sup>1</sup>**

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At your request, I have reviewed the above noted application for completeness pursuant to the Town of Arlington's Comprehensive Permit Regulations as voted by the Board of Appeals on July 8, 2015. On the Table below, I have identified the relevant section of the Regulations and identified whether the above noted application complies with the same.

As detailed below, the comprehensive permit application filed with the Board of Appeals on or about August 31, 2016 is incomplete in numerous respects **and the updated application submitted by the Applicant on or about March 19, 2020, remains incomplete as noted below.**

**By Memorandum dated March 18, 2020, the Applicant argued against the Board's original conclusions as to the status of the application; comments as to those arguments are provided below where relevant.**

**As originally noted in 2016,** I recommend that the Board of Appeals vote to inform the Applicant that the application is incomplete in the areas identified below, and require that these deficiencies be corrected at least thirty (30) days prior to the continued hearing in this matter.

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<sup>1</sup> Original text from September 26, 2016 Memorandum in black, **updated text dated July 7, 2020 in red.**

## Comprehensive Permit Filing Requirements<sup>2</sup>

## Compliance

<p>3.2.1 Project Eligibility documentation: documents specified in 760 CMR 56.04 to show the status of the Applicant and the acceptability of the site, including:</p> <p>3.2.2 evidence that the Applicant is a public agency, non-profit organization or a limited dividend organization;</p> <p>3.2.3 evidence that the project shall be fundable by a subsidizing agency under a low and moderate-income housing subsidy program. The Board may review this documentation to insure that the applicable subsidizing agency has performed the due diligence required under 760 CMR 56.04;</p> <p>3.2.4 evidence that the Applicant shall control the site and the means of access thereto. This documentation must adequately demonstrate that the Applicant possesses the necessary control over the site access to develop the project as proposed in the Application; and all materials, including correspondence to and from, the subsidizing agency, upon which the Project Eligibility letter was issued.</p>	<p>The application contains a Project Eligibility letter from MassHousing dated December 4, 2015.</p> <p>There is no evidence demonstrating that the applicant is a “limited dividend organization” and MassHousing’s December 4, 2015 Project Eligibility letter makes clear that, as of December 4, 2015, the applicant was not a limited dividend organization. The application contains sufficient information at this time to demonstrate a level of site control required by the Board’s regulations and 760 CMR 56.00 et seq.</p> <p>Incomplete. The Applicant’s March 18, 2020 response wrongly states that the Board “has no authority to question</p>
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<sup>2</sup> See Comprehensive Permit Regulations July 8, 2015.

	the finding of the Project Eligibility letter”.
<p>3.2.5 Preliminary Site Development Plan(s) - preliminary site development plan(s) (“Site Plan”) showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking area, walks and paved areas; and proposed landscaping improvements and open areas within the site including street trees, seating areas and landscape buffers. The Site Plan shall be signed and stamped by a registered professional engineer licensed in the Commonwealth of Massachusetts.</p> <p>Said Plan shall include the following information:</p> <ul style="list-style-type: none"> <li>(a) 3.2.5.1 existing wetland resource areas protected under the Massachusetts Wetlands Protection Act and Arlington Wetland Protection regulations, and including all land subject to flooding. Wetlands shall be delineated by a professional wetland scientist;</li> <li>(b) 3.2.5.2 existing and proposed topography at two-foot intervals;</li> <li>(c) 3.2.5.3 existing structures on adjacent properties within one hundred feet (100’) of the nearest property line;</li> <li>(d) 3.2.5.4 existing significant environmental features such as ledge outcrops, scenic views and large trees (i.e. greater than 24” dbh);</li> <li>(e) 3.2.5.5 proposed stormwater management system;</li> <li>(f) 3.2.5.6 proposed entrance(s) and egress(es) to the property;</li> </ul>	<p>Not complete and inconsistent with the preceding requirements; in many cases the submitted plans are illegible and not subject to scaling. <b>Incomplete.</b> Almost four years after they were due for submission, the Applicant has provided stamped engineering plans. With respect to the required elements of the plans: (a) it is unclear whether the requirements of 3.2.5.1 are met (see Sheet C-100 of the March 13, 2020 plans); (b) it is unclear whether the requirement of Section 3.2.5.2 are met (see March 13, 2020 plans); (c) requirements appear to have been met (d) requirements have not been met; (e) requirements have not been met; (f)</p>

<p>(g) 3.2.5.7 proposed lighting and a photometric analysis;</p> <p>(h) 3.2.5.8 Any proposed on site power generation facilities (such as a solar panel array) ; and</p> <p>(i) 3.2.5.9 Any proposed wireless communication facilities.</p>	<p>requirements appear to have been met; (g) requirements have not been met.</p>
<p>3.2.6 Report on Existing Site Conditions - a report, together with a plan(s) if applicable, regarding existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, any wetlands or vernal pools, mature trees, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. The zoning district or districts, if more than one (1) district is involved, shall also be shown on the plan. (If the abutting land is in another district or town, this shall also be shown.).</p>	<p>Not complete and inconsistent with the preceding requirements.</p> <p>Incomplete. The Applicant's March 18, 2020 submission continues to ignore the requirements of Section 3.2.6 of the Board's regulations.</p>
<p>3.2.7 Preliminary Scaled Architectural Drawings - preliminary architectural scaled drawings (with a minimum scale of 1/8" = 1'0) including typical floor plans, typical elevations and sections, and identifying construction type and exterior finish, signed and stamped by an architect. If one of the requested waivers is for relief from lot line setbacks or building height limitations, documentation shall include a street elevation showing the proposed new construction and existing buildings to at least 100 feet adjacent to the requested waiver area. The Board may additionally request a sun shading study after review of the streetscape elevation.</p>	<p>Not complete and inconsistent with the preceding requirements.</p> <p>Incomplete. The architectural plans dated March 11, 2020 are incomplete and not responsive to Section 3.2.7 of the Board's regulations as they failed to identify construction type and exterior finish.</p>
<p>3.2.8 Tabulation of Proposed Buildings - a tabulation of proposed buildings by type, size (number of bedrooms,</p>	<p>Complete.</p>

<p>floor area), and ground coverage, and summary showing the percentage of the tract to be occupied by buildings, parking and other paved vehicular areas, and by open areas.</p>	
<p>3.2.9 Utility Plans – a utilities plan showing the proposed location and types of wastewater, water supply (including hydrants) and stormwater management and drainage features and facilities. Adequate supporting information shall be provided to demonstrate that all utilities and related infrastructure shall meet all applicable federal and state laws and regulations (including, but not limited to, Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, the Arlington Stormwater Mitigation Bylaw (Article 15), and Low Impact Development guideline or best management practices, whichever is more stringent), as well as related regulations and requirements. Additionally, the utility plan or a separate utility plan shall show the location and type of electric and gas utilities and telecommunication(s) facilities.</p>	<p>Not complete and inconsistent with the preceding requirements; in many cases the submitted plans are illegible and not subject to scaling. <b>Incomplete. The March 13, 2020 plans remain incomplete and inconsistent with the requirements of Section 3.2.9 of the Board’s regulations.</b></p>
<p>3.2.10 Recreation and Open Space Amenities- a detailed listing and site plan identifying the recreation and open space amenities and areas to be proposed and set aside within the proposed project’s locus.</p>	<p>Not complete and inconsistent with the preceding requirements; the “landscaping plan” found at Tab 9 of the Application has no scale, provides no details as required and is illegible. <b>Incomplete. The March 13, 2020 plans remain incomplete and inconsistent with the requirements of Section</b></p>

	3.2.10 of the Board's regulations.
3.2.11 List of Requested Exemptions - a detailed list of requested exemptions to local bylaws, regulations, codes and requirements, which shall include an analysis of each requirement for which an exception is sought, the location on the plans for which the exception is sought (if applicable) and a complete explanation of why the exception is required to keep the project from becoming uneconomic. Only those exemptions specifically enumerated in the Application shall be considered.	<p>Not complete and inconsistent with the preceding requirements. The "List of Requested Waivers" requests waivers "from the Code of the City of Peabody" and seeks a "blanket" waiver from all relevant regulations without any explanation as to why the waiver is required to keep the project from becoming uneconomic.</p> <p>Incomplete. The "List of Requested Waivers" contained in the Applicant's March 19, 2020 submission continues to request a "blanket" waiver of all regulations and without compliance with the provisions of 3.2.11 of the Board's regulations.</p>
3.2.12 Pro Forma - a complete financial pro forma, detailing the projected costs and revenues of the proposed project. The pro forma shall itemize all development costs and all profits and distributions, in accordance with	Incomplete. The application contains no information responsive to the preceding

<p>applicable law, regulations and requirements, including, where applicable, the requirements and guidelines of the Commonwealth's Department of Housing and Community Development, MassHousing and the entity from which subsidy funding is sought. The Applicant shall fully disclose, in writing, to the Board all related party transactions. If the claimed land acquisition value is five percent (5%) or greater than the land's most recent assessed valuation as determined by the Town of Arlington, the application shall contain an appraisal of the property, prepared by an appraiser certified as a Massachusetts General Appraiser, with a valuation date no greater than six months prior to the application date.</p>	<p>requirement.</p> <p>Incomplete. The Applicant has provided the Board with a document claiming to be a pro forma submitted to MassHousing as part of the Applicant's original application for project eligibility approval. This document is neither a pro forma nor compliant with the requirements of 3.2.12 of the Board's regulations.</p>
<p>3.2.13 Impact Analysis of the Natural and Built Environment (for applications for projects of twenty (20) or more dwelling units or if otherwise required by the Board of Appeals) - prepared by a qualified environmental scientist, professional wetland scientist (PWS), professional hydrologist, professional engineer, certified soil scientist, botanist, hydrogeologist and/or other scientific professional with demonstrated qualifications (e.g. education, training, or demonstrated experience) provided to the Board. The Impact Analysis shall assess the impact of the construction phase(s) of the development, and the completed development on the environment within the development and adjacent thereto and shall be used to assist the Board in determining whether any local or regional need for below market rate housing outweighs relevant impacts of the proposed project at the proposed location. Such analysis shall include, but shall not be limited to, an evaluation of pre-development conditions,</p>	<p>Incomplete. The application contains no information responsive to the preceding requirement.</p> <p>Incomplete. The Application continues to ignore the requirements of 3.2.13 of the Board's regulations although the Applicant now states, "ALR agrees to submit an impact analysis for the Board's review within the public hearing process..."</p>

<p>construction phase impacts and post- development impacts on:</p> <ul style="list-style-type: none"> <li>• surface and groundwater quantity and quality;</li> <li>• groundwater recharge;</li> <li>• open space and recreational areas and space;</li> <li>• wildlife habitats and corridors; wetlands and bodies of water, including streams and rivers, both localized and general;</li> <li>• species of special concern in Massachusetts; and</li> <li>• historic and cultural resources.</li> </ul> <p>Such analysis shall include proposed mitigation of any identified post-development impacts. Mitigation measures requiring continuing or periodic maintenance shall be identified and a proposed maintenance plan shall be included with the Impact Analysis.</p>	
<p>3.2.14 Traffic Impact Report (for applications for projects of twenty (20) or more dwelling units or if otherwise required by the Board) - prepared by a registered professional engineer qualified in the field of traffic engineering, analyzing the proposed project’s impact on the congestion, safety and overall convenience of the roadway system, including the roads providing access to and egress from the proposed project and all roads and areas otherwise impacted in any material way or manner by the proposed project, regardless of the level of additional traffic projected and regardless of whether or not the road is under the jurisdiction of the Town of Arlington or located in an adjacent municipality. The project’s cumulative impacts on both vehicular and pedestrian travel shall be addressed in detail.</p>	<p>The “Traffic Impact and Access Study” is dated April 2014 and inconsistent with the preceding requirements. The Study is marked DRAFT and no evidence as to who prepared the report or their qualifications is provided. <b>Incomplete.</b> The April 2014 study noted above remains the only traffic impact report submitted by the Applicant to date.</p>



<p>3.2.15 Statement of Impact on Municipal Facilities and Services – The Application shall provide a detailed analysis of the impact of the proposed project on municipal facilities and services and include an analysis of the costs imposed upon the Town as well as the anticipated tax and other revenue to be generated by the proposed project.</p>	<p>Incomplete. The application contains no information responsive to the preceding requirement.</p> <p><b>Incomplete. The Applicant continues to ignore the requirements of Section 3.2.15 of the Board's regulations.</b></p>
<p>3.2.16 Statement of Demonstration of compliance with Arlington's Master Plan and Open Space Plan – The Application shall provide a detailed analysis as to how the proposed development is consistent and in harmony with the goals of the Arlington Master Plan and the Open Space Plan, as they may be revised from time to time.</p>	<p>Incomplete. The application contains no information responsive to the preceding requirement.</p> <p><b>Incomplete. The Applicant continues to ignore the requirements of Section 3.2.16 of the Board's regulations and wrongly states that the Board is not entitled to the same.</b></p>
<p>3.2.17 Roster of Development team members and list of prior developments – (i) a list of all members of the development team, including all contractors and subcontractors to the extent known at the time of the Application; and (ii) a list of all prior development projects (regardless of whether residential or commercial, etc.) over the last ten (10) years.</p>	<p>Not complete. <b>The Applicant has provided the Board with a roster of team members in its March 19, 2020 submission.</b></p>

<p>3.2.18 List of abutters, certified by the Assessor's office, including addresses and owners' names of record. Twenty (20) paper copies of said Application with attachments and exhibits shall be submitted to the Town Clerk upon filing together with 2 cds (or flashdrives) each with separate pdf files of each of the required documents (to be distributed to the Board Members, the Board Recording Secretary, and to various Town departments). Up to ten (10) additional copies shall be provided to the Board upon request. Additionally, 11" x 17" copies of all scaleable and legible plans (with match-lines) shall be provided to the Board for copying purposes by the Board or the Town Clerk together with five (5) sets of such plans.</p>	<p>Not complete. <b>Incomplete. The Applicant's March 19, 2020 remains inconsistent with the requirements of Section 3.2.18 of the Board's regulations.</b></p>
<p>3.2.19 Payment of filing fee. The Application shall be accompanied by a filing fee, based on a flat fee and the number of housing units proposed: for limited dividend organizations where the total project contains 8 or more units: \$10,000 base fee plus \$200 per market rate unit proposed.</p>	<p>Unclear. The Board should confirm that the required filing fee was paid at the time the application was filed with the Arlington Town Clerk. <b>The Applicant has provided a receipt for payment to the Town for \$42,800.</b></p>